

Message

From: Jones, Enesta [Jones.Enesta@epa.gov]
Sent: 9/27/2019 8:00:12 PM
To: AO OPA OMR CLIPS [AO_OPA_OMR_CLIPS@epa.gov]
Subject: Daily News Clips, 9/27/19

Daily News Clips
Friday, September 27, 2019

Air

Bloomberg Environment: California Calls EPA's Air Pollution Claims Overblown

<https://news.bloombergenvironment.com/environment-and-energy/california-calls-epas-air-pollution-claims-overblown>

Reuters: U.S. environmental groups sue over Trump auto emissions move

<http://news.trust.org/item/20190927183739-j3pk6/>

Bristol Bay

E&E: Senate appropriators side with EPA in Pebble fight

<https://www.eenews.net/eedaily/stories/1061172817/search?keyword=EPA>

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E&E: Committee makes demands on reorganization, transparency

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California

E&E: Could Trump's 'anti-California agenda' help him?

<https://www.eenews.net/greenwire/2019/09/27/stories/1061175013>

NYT: E.P.A. Accuses California of 'Significant' Air and Water Problems

<https://www.nytimes.com/2019/09/26/climate/trump-california.html?searchResultPosition=1>

Chemicals

Bloomberg Environment: 'Forever Chemicals' Coming to Your Table, if Not Already There

<https://news.bloombergenvironment.com/environment-and-energy/forever-chemicals-coming-to-your-table-if-not-already-there>

Chemical Watch: US EPA watchdog to investigate agency conduct in Chemours case

<https://chemicalwatch.com/82511/us-epa-watchdog-to-investigate-agency-conduct-in-chemours-case#overlay-strip>

States

E&E: State regulators, agency spar over Wheeler's Calif. threats

<https://www.eenews.net/greenwire/2019/09/27/stories/1061175163>

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E&E: Fall environmental docket: 'Calm before the storm'

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Air

Bloomberg Environment

California Calls EPA's Air Pollution Claims Overblown

<https://news.bloombergenvironment.com/environment-and-energy/california-calls-epas-air-pollution-claims-overblown>

By Emily Dooley

In the ongoing fight between California and the Trump administration over air quality, the dispute has turned into CA-said, EPA-said.

The state and the U.S. Environmental Protection Agency have been sparring since President Donald Trump took office, with spats this week touching on vehicle emissions and water quality issues created by homeless people.

On Sept. 24, EPA Administrator Andrew Wheeler wrote to the state that it had failed to file complete plans to combat air pollution, and could lose highway money as a result. The letter also said California had 82 areas that weren't meeting federal standards for air pollution from lead, carbon monoxide, ozone, and other contaminants.

But the California Air Resources Board said that number is far overblown, and listed 20 counties, valleys and areas that aren't meeting one or more standards for pollutants that the EPA regulates, agency spokeswoman Melanie Turner said in an email.

Higher temperatures, more cars and trucks on the road, and longer trips are to blame, despite state efforts to reduce emissions, she said this week.

"The EPA total of 82 is for every instance of nonattainment for all pollutants for every region in California over the half century," she said.

Restricting federal transportation funding is also a great threat, she said, adding "this is another example of EPA engaging in a vendetta against California."

The EPA press office wouldn't supply a list of areas it said are out of compliance, and the 82 number also differs from what the agency has in an online list.

They agency wouldn't address California's numbers, saying in a Sept. 26 email only that "summed across standards, California had 82 non-attainment areas as of August 2019."

Reuters

U.S. environmental groups sue over Trump auto emissions move

<http://news.trust.org/item/20190927183739-j3pk6/>

By David Shepardson

WASHINGTON, Sept 27 (Reuters) - Nine U.S. environmental groups sued the U.S. Transportation Department on Friday over its effort to bar California from setting tailpipe emissions and electric vehicle requirements.

The groups include Environment America, Public Citizen, Sierra Club, the Union of Concerned Scientists, Center for Biological Diversity and the Natural Resources Defense Council. Last week, a group of 23 states joined by the District of Columbia, Los Angeles and New York City filed a similar suit in U.S. District Court in Washington.

The Transportation Department declined to comment. Its determination is formally set to take effect in late November.

The legal fight pits a Democratic majority state that has become the U.S. environmental champion against a Republican president trying to cut regulations in hopes of boosting the economy.

For decades, California has played a national role in influencing what Americans drive. The state's vehicle emissions rules, more stringent than the Trump EPA's rules, are followed by a dozen other states that account for more than 40% of U.S. vehicle sales.

This week, Minnesota and New Mexico rebuffed the Trump administration and said they planned to adopt California's tailpipe rules.

"There's no legal basis for the Trump administration's efforts to leave Californians choking on smog and helpless to curb greenhouse gas pollution spewing out of car tailpipes," said Maya Golden-Krasner, an attorney at the Center for Biological Diversity.

The suit challenges the determination unveiled last week by the Transportation Department and its agency the National Highway Traffic Safety Administration, that federal law preempts state and local regulation of vehicle fuel economy.

The legal challenges do not yet address a parallel decision by the U.S. Environmental Protection Agency (EPA) to revoke a 2013 waiver California received under the Clean Air Act to set emissions standards.

In August, the Justice Department launched an antitrust probe of Ford Motor Co, Volkswagen AG, BMW AG and Honda Motor Co that struck an agreement with California to vehicle reduce emissions.

Democratic members of U.S. Congress have demanded that the Justice Department and White House turn over documents and explain the decision to probe the automakers.

A person briefed on the matter said the Justice Department will begin meeting with the four automakers next week, confirming a Wall Street Journal report.

On Friday, Senator Dianne Feinstein asked the EPA's inspector general to investigate the agency's threat to withhold state highway funding because of the state's poor air quality. The EPA said Friday in response that its actions "are not political." (Reporting by David Shepardson; Editing by David Gregorio)

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Bristol Bay

E&E

Senate appropriators side with EPA in Pebble fight

<https://www.eenews.net/eedaily/stories/1061172817/search?keyword=EPA>

By

Ariel Wittenberg and Kevin Bogardus

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The Senate Appropriations Committee is giving EPA permission to veto a permit for the contentious Pebble mine in Alaska's Bristol Bay if it is not satisfied with the Army Corps of Engineers' environmental review.

The committee report accompanying the Interior-EPA appropriations bill, which the panel approved yesterday, contains language regarding the "protection of resources in Bristol Bay, Alaska."

In it, the committee states that if federal agencies like EPA, the Department of the Interior or NOAA Fisheries "are not satisfied with the Army Corps' analysis of the project, the agencies are encouraged to exercise their discretionary authorities, which include EPA's enforcement authority under the Clean Water Act, at an appropriate time in the permitting process to ensure the full protection of the region."

The provision, written by Sen. Lisa Murkowski (R-Alaska), chairwoman of the Interior and Environment Appropriations Subcommittee, also addresses concerns from all three federal agencies that the Army Corps' draft environmental impact statement on Pebble does not include enough data to determine whether the massive copper and gold mine venture would impact salmon or their habitat.

"Sound science must guide federal decision making and all gaps and deficiencies identified in comments from Federal agencies and other stakeholders, including Alaska Natives, must be fully addressed, even if that requires additional scientific study, data collection, and more comprehensive analysis of the project's potential impacts," the report says.

While Interior has called for a supplemental environmental review of the project, officials at the Army Corps Alaska District responsible for reviewing Pebble's permit application have said that they do not see a need to produce such a supplemental even though the company changed its mine plan after the draft review was completed (*Greenwire*, Sept. 18).

Murkowski told E&E News last week she was concerned by those comments, saying, "It didn't appear that they were giving the weight and credence to the issues that had been outlined by the EPA in their comment."

She added, "And they need to take them seriously. We expect them to" (*Greenwire*, Sept. 19).

Until recently, Murkowski has walked a fine line on the Pebble mine, never advocating for or against the project but instead asking for a fair "process" for it.

EPA came under fire during the Obama administration for proposing to limit mining in Bristol Bay as a means to protect the salmon habitat there, which would have prevented Pebble from moving forward.

The mining company sued, saying EPA could not preemptively veto a project and had to wait until after the permitting process.

Former EPA Administrator Scott Pruitt first revoked the proposed veto and then reinstituted it in 2017 after Pebble filed its Clean Water Act permit application with the Army Corps.

While EPA has expressed significant concerns with the Corps' permit review, it formally quashed the potential veto in July (*E&E News PM*, July 30).

The agency has not ruled out proposing an additional veto but has merely said that the veto proposed in 2014 was based on "outdated" hypothetical mine scenarios.

Language in the Appropriations Committee report emphasizes that EPA could use its Clean Water Act veto power only at "an appropriate time in the permitting process," which presumably would mean once the Army Corps review is complete.

"Adverse impacts to Alaska's world-class salmon fishery and to the ecosystem of Bristol Bay, Alaska, are unacceptable," the committee wrote.

Pebble LP, the mining company behind the project, said it has been responding to requests for information from the Army Corps based on comments from federal and state agencies. In an email, Pebble spokesman Mike Heatwole said the company believes the Army Corps will address all concerns in the final EIS.

"Our technical information is sound, defensible, and appropriate," he said. "We can responsibly develop a mine and not harm the fishery. Frankly, it is in our interest to have a thorough EIS."

Bristol Bay resident and commercial fisherman Robin Samuelsen argued that Murkowski's language should send the Army Corps "back to the drawing board."

"Decisions on something as important as the future of the world's greatest salmon fishery should be done through an open, fair and scientific process — not a 10-minute conversation on Air Force One," he said, a reference to Alaska Republican Gov. Mike Dunleavy's recent conversations with President Trump about mining (*Greenwire*, Aug. 28).

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Budget

E&E

Committee makes demands on reorganization, transparency

<https://www.eenews.net/eedaily/2019/09/27/stories/1061173141>

By Kevin Bogardus

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Senate appropriators are pushing to keep a tighter budgetary leash on EPA compared with their House counterparts.

Under legislation approved by the full Senate Appropriations Committee yesterday, EPA would receive about \$9 billion in fiscal 2020, less than the \$9.5 billion the House has already approved for the agency (*Greenwire*, Sept. 26).

Still, senators ignored deep budget cuts President Trump proposed for EPA that would have left the agency with about \$6 billion in funds.

The Senate bill report makes clear lawmakers do not support reductions proposed in the White House budget plan "unless explicitly noted."

Further, the Senate legislation does not provide any of the president's requested funds for "workforce reshaping" at EPA. The House included similar language in its bill report.

Under Trump's proposal, EPA would have a total budget authority of nearly \$31 million, drawing from various program accounts, for the reshaping effort.

Those funds would have support buyouts, early retirement offers as well as covering relocation costs for EPA staff being moved for new work assignments.

In addition, the Senate committee does not expect EPA to close or consolidate any of its regional offices in fiscal 2020 and is limited to \$1 million for any reprogramming at the agency, also similar to the House legislation, which passed in a multibill package, H.R. 3055.

That reprogramming includes "closures, consolidations, and relocations of offices, facilities, and laboratories," said the Senate bill report.

IG funding, calendars

It also says EPA should continue posting daily calendars of its senior leaders on its website, encouraging the agency to do so "within 24 hours" of the end of each business day.

"As the EPA continues to take steps to improve transparency, the Agency should ensure that each daily calendar includes meetings, calls, and events, as well as the names of the organizations represented in those meetings, calls, or events," said the report.

Unlike the House, Senate appropriators have not provided a budgetary boost for EPA's internal watchdog. Instead, the agency's Office of Inspector General would receive level funding of nearly \$41.5 million in fiscal 2020, the same as the prior year.

The House would provide millions more to the IG, recommending the EPA watchdog receive \$48.5 million as well as nearly \$9.6 million from the Superfund account for a total of about \$58 million in combined funding.

That is the same amount the office requested in a Feb. 8 [letter](#) to Office of Management and Budget Director Mick Mulvaney.

The president's budget proposal would instead cut funds for the EPA IG, slating it nearly \$38.9 million.

Also, the bill report notes that the committee "is aware of concerns" about EPA's latest Freedom of Information Act regulations. Consequently, appropriators expect a quarterly briefing from the agency on the rule's implementation, including the exemptions invoked when an EPA official issues a determination to withhold records.

"The Committee wants to ensure that such regulatory changes do not result in undue delays, redactions, and the withholding of information in contravention of the intent of the FOIA statute," according to the report.

EPA's new FOIA rule has sparked litigation as well as legislation as critics worry it goes against a federal appeals court ruling on the public records law ([Greenwire](#), July 24).

Air pollution

Under the bill, state and local air quality management grants would receive \$220.8 million, which an accompanying report describes as equal to the amount in EPA's 2019 operating plan, although it's less than the \$228.2 million that Congress actually appropriated for this year. The House has proposed a funding boost to \$238.2 million for fiscal 2020.

Unlike its House counterpart, however, the Senate measure would keep 2020 spending on two popular grant programs at close to this year's levels.

Funding for Diesel Emissions Reduction Act (DERA) grants, which supports replacement or retooling of older diesel-powered vehicles and equipment, would slip slightly from \$87 million to about \$85.2 million.

Targeted Airshed grants, geared to helping areas with severe ozone or particulate matter pollution, would rise from \$52 million to \$56.3 million. The House bill, by contrast, would slash DERA funding to \$50 million in 2020; Targeted Airshed grants would drop to \$30 million.

The Senate bill would also award \$24 million in "multipurpose" grants for states and Indian tribes to steer to priorities of their choosing. This year, that program is getting \$11 million. The House legislation would zero it out.

Although the Senate committee did not set a specific amount for grants to reduce indoor radon exposure, the report says that 2020 spending should be kept "at not less than" this year's benchmark of \$8.1 million. The House measure would maintain that level.

Water

The Senate bill includes modest increases in funding EPA's geographic programs, the Great Lakes Restoration Initiative and the Chesapeake Bay Program.

They are currently funded at \$300 million and \$73 million, respectively, and the senators would provide \$301 million to the Great Lakes Restoration Initiative and \$76 million to the Chesapeake Bay Program.

The Trump administration this year requested cutting funding to the programs by 90%, though the president later walked back that request and asked for full funding for the Great Lakes.

The Senate bill does not provide quite as much funds as House appropriators did in their legislation, which would give the Great Lakes Restoration Initiative \$305 million.

Senators also eschewed the Trump administration's request to zero out other geographical cleanup programs, funding modest increases for the San Francisco, Puget Sound, South Florida, Long Island Sound, Gulf of Mexico, Lake Champlain, Southern New England Estuaries, Lake Pontchartrain and Columbia River Basin restoration programs.

Chemicals, Superfund

The bill would provide about \$713 million for science and technology, with an additional \$17.8 million for EPA's Superfund program. This is \$6 million more than the previous fiscal year.

Programs to get research dollars include the Integrated Risk Information System and a sunscreen ingredient analysis to assess the effects of harmful chemicals on marine life.

On per- and polyfluoroalkyl substances, or PFAS, the legislation would provide \$25 million to various programs to address contamination. EPA requested that \$20 million go toward state cleanup of PFAS and other hazardous chemicals.

Appropriators also want to be briefed on EPA's progress of setting a maximum contaminant level for the chemicals, according to the report.

A provision included in the manager's amendment by Sen. Joe Manchin (D-W.Va.) encourages EPA to send the committee regular updates of a Superfund site in Minden, W.Va. EPA added the site in 2018, after residents contacted the agency over concerns about polychlorinated biphenyl contamination.

[Click here](#) for the bill.

[Click here](#) for the committee report.

[Click here](#) for the manager's amendment.

California

E&E

Could Trump's 'anti-California agenda' help him?

<https://www.eenews.net/greenwire/2019/09/27/stories/1061175013>

By Tim Cama

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EPA's recent crackdown against California aligns with President Trump's political priorities, leading critics to charge that the agency is working to settle scores or help Trump's reelection.

The agency and Administrator Andrew Wheeler have taken an unprecedented series of steps against the Golden State, mostly in the last week, including threatening to withhold highway funds for its notoriously poor air quality, claiming waste from homeless people in San Francisco is illegally polluting waterways, blocking the state from enforcing greenhouse gas standards for cars and arguing that its deal with four automakers on emissions standards is illegal.

"This is about political scores and the anti-California agenda. This administration never does anything about actually protecting the environment. And it's just another new low," Rep. Jared Huffman (D-Calif.) told E&E News, pointing to corruption allegations at the Justice and Transportation departments.

"This grotesque corruption of public service has clearly included the EPA, which now cares about politics far more than environmental protection," he said. "Any time actual government agencies and officials use their power to settle political scores, that's an abuse of process. That's a big, big problem."

California has been a frequent foil for Trump, and vice versa. He often vocally criticizes the state and its overwhelmingly Democratic leaders for its sanctuary city and environmental policies, makes it out to be a cesspool of homeless people, and continues to claim — without evidence — that 3 million undocumented immigrants illegally voted there in the 2016 election. Hillary Clinton won the state by more than 4.2 million votes.

"Nearly half of all the homeless people living in the streets in America happen to live in the state of California. What they are doing to our beautiful California is a disgrace to our country. It's a shame. The world is looking at it," Trump told the crowd at a Cincinnati campaign rally last month.

His anti-California rhetoric appears to rile his base. The comments at the rally generated cheers, as they frequently do at such events.

Trump revealed the San Francisco action a week in advance. He told reporters on Air Force One flying back to Washington from California that EPA would punish the city for water pollution from homeless people, saying both it and Los Angeles "have tremendous things that we don't have to discuss pouring into the ocean."

"You know, there are needles; there are other things," he said.

California has sued the Trump administration more than 60 times, with a quarter of the cases directed at EPA. And the state's largely liberal leaders don't hold back in their criticisms of Trump.

"California is the game changer, and Trump can't stand it. We are winning. We trumped Trump," Gov. Gavin Newsom (D) said Wednesday on "The Daily Show with Trevor Noah," referring to the state's deal with automakers, a pact that elicited not just the EPA letter with the Transportation Department but also a Justice Department antitrust probe.

"Four automobile companies basically gave him the middle finger and walked away from his desire to roll back vehicle emissions standards and said, 'You know what, thanks a lot. We're with California. We're with the higher standards. We're with the Obama-era standards.' He is beyond frustrated, so now he is threatening to take away our waiver," Newsom continued.

Trump's critics say the deluge of actions against the Golden State is unprecedented.

"I'm not aware of an EPA administrator coming down on a state like this," said Joe Goffman, head of the Harvard Environmental & Energy Law Program and an EPA veteran who most recently served the Obama administration as a top Clean Air Act lawyer.

"It's not credible to see either of these letters as being motivated by the best interests of the people of California," Goffman said of EPA's missives on the state's air pollution and San Francisco's stormwater.

Goffman said there's no doubt there are political motivations behind the actions.

"A trope among Republicans has been to refer to, for example, Nancy Pelosi as a liberal from San Francisco — the name of the city almost being an epithet," he said. "The fact pattern, the letter itself, seems directly derived from tweets the president issued a couple weeks ago."

Rep. Nanette Barragán (D-Calif.) said there's "no doubt" politics is behind the actions.

"They've been coming after California. Whether it's this, whether it's fuel standards, it's clear that this administration has no love for California and is targeting California," she said.

In speaking with reporters yesterday, Wheeler said his San Francisco letter originated when Barragán asked him at a hearing about dirty tap water in Compton, Calif. Wheeler looked into the issue and found more problems in the state, he said (*Greenwire*, Sept. 26).

Barragán called that "opportunistic" and noted that EPA recently wrote her a letter boasting about the actions the state has taken to clean up its water.

"The fact that he's taking an inquiry from a member from California to try to support what he's doing I think just goes to show you the playbook," she said.

California Attorney General Xavier Becerra (D) stopped short in an E&E News interview of saying Trump is playing politics.

"I won't characterize their motives," he said. "But they aren't based on the rule of law. So they're not done for the right reasons. And that's perhaps why we keep winning" (*see related story*).

California does have long-standing air pollution issues. While Wheeler and others have used that to paint the state as a bad actor, the issues are mostly due to the California's topology.

Newsom acknowledged the problem but said the Trump administration is removing a key tool the state has to fight air pollution by blocking its zero-emissions vehicle mandate.

"The reality is, we still ... have seven of the top 10 dirtiest cities as it relates to clean air," he said on his "Daily Show" appearance. "We'll never address our clean air goals without addressing emissions. It's the cars that are substantially and stubbornly the issue."

EPA contends its actions are completely aboveboard and denied politics are at play — but took a shot at the Obama administration in the process.

"Highlighting that California has the worst air quality in the nation along with other serious environmental problems is not a political issue," said EPA spokesman Michael Abboud. "The Trump administration, unlike the previous administration, will act to protect public health and the environment for all Americans."

Wheeler acknowledged to reporters that he spoke with Trump about the issue but said his work on it started before any conversations with Trump.

"He's very concerned about what the homeless issue is in California and how that's impacting the water and the water supplies, and the waste that's going in, particularly, I believe, in LA," Wheeler said.

"I told him what we're already doing, and that we're working on this letter and taking a look at how California is implementing their programs, predating my conversations with the president," he said.

Mandy Gunasekara, who was a senior official at EPA's air office before leaving this year to start the pro-Trump group Energy 45, said California's issues are real and career staff have been driving the agency's enforcement against them.

"His public comments are one thing, but look at the work the agency has done. This has been a long-standing result of the fact that a lot of the air pollution control and water pollution control was delegated to the state, and the fact that they've failed to implement it is a long-standing issue," she said.

"There's nothing politically motivated," Gunasekara continued. "That is tied to a requisite responsibility that the federal government has when you delegate any environmental protection authority to a state. It stems from legal requirements."

But she did acknowledge one way this crackdown could help Trump's reelection campaign. He has tried to highlight environmental accomplishments going into the campaign season, and looking like he's tough on pollution might feed into that.

"The president understands the authority laid out by the law, and understands that he is in charge of executing that. If a state or region or municipality is failing to adequately protect its citizens, he will step in," she said. "This is a very good example of him doing just that."

Reporters Maxine Joselow and Ariana Figueroa contributed.

NYT

E.P.A. Accuses California of 'Significant' Air and Water Problems

<https://www.nytimes.com/2019/09/26/climate/trump-california.html?searchResultPosition=1>

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By Lisa Friedman

WASHINGTON — The Trump administration on Thursday, pressing the president's complaints about homelessness in California, demanded the state improve the way it deals with human waste, arsenic and lead in water as it escalated the administration's war with the country's most populous state.

In a letter to Gov. Gavin C. Newsom of California, Andrew Wheeler, the administrator of the Environmental Protection Agency, accused the state of "deficiencies that have led to significant public health concerns" and issued a veiled threat that federal funding to the state could be at risk.

The E.P.A.'s Letter to California



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

September 26, 2019

THE ADMINISTRATION

The Honorable Gavin C. Newsom
1303 10th Street, Suite 1173
Sacramento, California 95814

Dear Governor Newsom:

The U.S. Environmental Protection Agency and California Environmental Protection Agency are responsible for working together to protect public health and the environment in your state. As a result of the authorization of state laws and the delegation of federal authority, California administers and implements the federal *Clean Water Act* and *Safe Drinking Water Act* among other federal programs.¹ Congress designed these statutory frameworks for the states to take the lead role in implementation, with the EPA overseeing state actions.

Based on data and reports, the EPA is concerned that California's implementation of federal environmental laws is failing to meet its obligations required under delegated federal programs. The cost of this failure will be paid by those Californians exposed to unhealthy air and degraded water. The purpose of this letter is to outline the deficiencies that have led to significant public health concerns in California and to outline steps the state must take to address them. To ensure that appropriate steps are being taken to protect Californians, the EPA would like a remedial plan from the state detailing the steps it is taking to address the issues raised below.

The EPA is aware of the growing homelessness crisis developing in major California cities, including Los Angeles and San Francisco, and the impact of this crisis on the environment. Indeed, press reports indicate that "piles of human feces" on sidewalks and streets in these cities are becoming all too common.² The EPA is concerned about the potential water quality impacts from pathogens and other contaminants from untreated human waste entering nearby waters.³ San

¹ The EPA first authorized California's base *Clean Water Act* program in 1973. The EPA subsequently approved the state to regulate discharges from federal facilities in 1978, administer the pretreatment program in 1989 and issue general permits in 1989. California also has received primacy to exercise *Safe Drinking Water Act* responsibilities in the state.

² See, e.g., Raphaelson, Samantha, "San Francisco Squalor: City Streets Strewed With Trash, Needles And Human Feces," NPR (Aug. 1, 2018) available at <https://www.npr.org/2018/08/01/634626338/san-francisco-squalor-city-streets-strewed-with-trash-needles-and-human-feces> (last accessed Sept. 22, 2019).

³ Human waste from homeless populations is a recognized source of bacteria in water bodies. See American Society of Civil Engineers, "Pathogens in Urban Stormwater Systems" (Aug. 2014); "The California Microbial Source Identification Manual: A Tiered Approach to Identifying Fecal Pollution Sources to Beaches" (Dec. 2013); Tools for Tracking Human Fecal Pollution in Urban Storm Drains, Streams, and Beaches (Sept. 2012). These reports are

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It is the latest in a series of aggressive actions that the Trump administration has taken against California since the state surprised the E.P.A. by signing a deal with four automakers that opposed a federal plan to roll back a national vehicle tailpipe pollution standard. President Trump has personally intervened to add urban California's problem with homelessness to his litany of complaints.

"California needs to fulfill its obligation to protect its water bodies and, more importantly, public health, and it should take this letter as notice that EPA is going to insist that it meets its environmental obligations," Mr. Wheeler said in a statement Thursday.

“If California does not step up to its delegated responsibilities, then EPA will be forced to take action,” Mr. Wheeler added.

His letter made explicit reference to the “growing homelessness crisis developing in major California cities” — an issue that has captivated the president.

California has sparred with Mr. Trump since the earliest days of the administration. But analysts said the newest skirmish is significant because it shows President Trump’s willingness to use obscure levers of policy to punish states that oppose him.

It comes days after Mr. Wheeler warned that the administration would withhold federal highway funds from California if it did not address a lengthy backlog of state level pollution plans. Earlier this month, Mr. Trump said the administration would revoke the state’s legal authority to set its own regulations on planet-warming emissions from automobile tailpipes.

Mr. Newsom’s office hit back, saying the E.P.A.’s action was of a piece with the Ukraine scandal fueling impeachment talk and engulfing the White House.

“There’s a common theme in the news coming out of this White House this week. The president is abusing the powers of the presidency and weaponizing government to attack his political opponents. This is not about clean air, clean water or helping our state with homelessness. This is political retribution against California, plain and simple,” Nathan Click, a spokesman for Mr. Newsom, said in a statement.

The Trump administration also has taken aim at California in other ways, attacking the state for its handling of the homeless problem, and threatening to cut off critical federal wildfire aid.

The E.P.A. letter lays out a multitude of accusations and says the state’s lack of response to its homeless crisis “prompted E.P.A. to review other programs.” It cites numerous pollution discharges into public water systems. While the letter does not explicitly threaten to take funding away from California, it notes that California has received \$1.16 billion in federal water treatment funds over the past five years.

Mr. Wheeler cited press reports that human feces from homeless people in Los Angeles and San Francisco is increasingly common on streets and sidewalks. “The E.P.A. is concerned about the potential water quality impacts from pathogens and other contaminants from untreated human waste entering nearby waters.”

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The letter goes on to cite numerous other problems, including exceeded arsenic and lead levels, and gave the state 30 days to deliver a “remedial plan.”

California has waged its end of the war just as fiercely. The state has 30 environmental lawsuits pending against the administration, most in an effort to stop the rollbacks of climate change regulations enacted under the Obama administration.

Judith Enck, a former E.P.A. regional administrator appointed by President Barack Obama, called the new environmental accusations against California “ridiculous” and said states like Texas and Louisiana have far more problems with levels of lead and arsenic in water that exceed federal standards. When asked how many violations other states have incurred, an E.P.A. spokeswoman sent the link to a federal safe drinking water reporting site.

“I’m not going to say that enforcement isn’t a problem, but there are other states that are far worse than California,” Ms. Enck said. “This an obvious attempt at political intimidation.”

She said the compilation of data about California’s compliance would have involved a large amount of work on the part of E.P.A. staff.

“They apparently have a lot of free time because they are no longer enforcing federal environmental laws,” she said.

Jeffrey Mount, a senior fellow at the Water Policy Center of the Public Policy Institute of California, said the E.P.A.’s accusations are not even accurate. When it comes to the issue of homelessness and human waste, Mr. Mount said major California cities collect and treat all runoff. The same goes for the sewage and storm water that E.P.A. complained is discharged into the San Francisco Bay and Pacific Ocean.

“The impression is that they are discharging raw sewage into the bay. That’s not true. It’s treated,” Mr. Mount said. He said California’s water quality has been making steady improvements over the past two decades because of state investments.

Mandy Gunasekara, a former policy adviser in the E.P.A. under the Trump administration, defended the letter, saying California had “failed its citizens in the most basic role of any state, keeping them healthy and safe.” She said if California would not fix its problems, Mr. Trump would “step in.”

California has frustrated the Trump administration’s efforts to roll back Obama-era national standards for automobile tailpipe emissions by adhering to an even more stringent standard. In July the state announced that four automakers had signed a deal with California to comply with its tighter standards if the national rollback succeeds.

Mr. Trump then announced he would revoke California’s authority to set its own rules for setting tailpipe emissions levels, and the state hit back with a lawsuit, joined by 23 other states that also want tougher standards.

Bruce Cain, a political scientist at Stanford University, called the letter political posturing by Mr. Trump to paint liberal states and cities as dangerous and poorly run ahead of his re-election campaign.

“He’s trying to position the Democratic Party as a failed party that cannot govern,” Mr. Cain said. “I think everyone in California will see this for what it is.”

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Chemicals

Bloomberg Environment

'Forever Chemicals' Coming to Your Table, if Not Already There

<https://news.bloombergenvironment.com/environment-and-energy/forever-chemicals-coming-to-your-table-if-not-already-there>

By Pat Rizzuto

- <!--[if !supportLists]--><!--[endif]-->PFAS in livestock, crops, gardens raising questions states struggle to answer
- <!--[if !supportLists]--><!--[endif]-->Three farms shuttered but problem could be more widespread

Third-generation dairy farmer Fred Stone lost his cows, his livelihood, and his plans for retirement after opening a letter on Nov. 3, 2016.

The letter, from his local water district, said a well providing his drinking water was contaminated—at twice the EPA's health advisory limit—with some chemicals he'd never heard of and couldn't pronounce.

Later tests showed his cows' milk was contaminated too, with as much as 20 times the advisory limit. Stone had to stop selling his milk, and hasn't sold any since.

The Department of Environmental Protection in Maine, where Stone and his wife, Laura, live, eventually concluded the chemicals were in fertilizer the Stones spread on their property years ago under a state-encouraged program for wastewater sludge.

It's been 15 years since Stone spread any sludge. But time doesn't matter when it comes to the compounds dubbed "forever chemicals," used since the 1950s in everything from carpeting to firefighting foam.

"These cows, this land are our assets," he said. "Now they're worthless."

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'Got To Be More Out There'

Practically nothing is known about the toxicity of the vast majority of chemicals collectively known as per- and polyfluoroalkyl substances, or PFAS, or the extent to which they're in people or the environment, said Christopher Lau, an Environmental Protection Agency research biologist. Even less may be known about how far they've reached into the food supply.

State and federal regulators and researchers have only recently begun to study their presence in agriculture. Stone's farm is one of only three in the country known to have been shut down by the presence of PFAS.

But levels above the EPA's advisory limit have been found in drinking water supplies serving 6 million people. More than 400 U.S. military bases have had known or potential releases. The chemicals have been found at more

than 100 Superfund sites, according to information presented by Laurence Libelo, an environmental engineer at the EPA, at a recent conference.

“There’s got to be more out there. It’s almost impossible with something this widespread that we’ve found them all,” said Owen Duckworth, a North Carolina State University researcher. He’s investigating whether airborne PFAS released by Chemours Co. at its Fayetteville, N.C., plant were absorbed by produce grown in local gardens.

Research on a handful of the hundreds of types of PFAS shows they can affect growth, learning, and behavior of infants and older children; make it harder for a woman to get pregnant; interfere with the body’s natural hormones; increase cholesterol levels; and raise the risk of cancer, according to the Agency for Toxic Substances and Disease Registry.

FDA: No Definitive Conclusions

The Food and Drug Administration (FDA) and U.S. Department of Agriculture declined repeated calls and emails requesting interviews about their ongoing investigations into PFAS in the food supply.

Chemours, which produces a range of fluorochemicals, declined to comment. 3M, which began to make the two most widely detected types of PFAS in the 1950s but no longer does, also declined to be interviewed or answer emailed questions. Instead, 3M pointed to recent FDA data on per- and polyfluoroalkyl substances in food.

“The FDA does not have any indication that these substances are a human health concern, in other words a food safety risk in human food,” Ned Sharpless, acting FDA commissioner, said in June after the agency released that data.

Yet, the FDA tested less than 100 samples of food this year and smaller samples in previous years. Therefore it can’t make definitive conclusions, agency spokesman Peter Cassell said by email.

A 2001 3M food study found high levels of perfluorooctane sulfonate (PFOS) or perfluorooctanoic acid (PFOA) in bread, apples, green beans, milk, and ground beef purchased from grocery stores in six cities in Alabama, Florida, Georgia, and Tennessee, according to a copy of the study that Robert Bilott, a partner with Taft Stettinius and Hollister LLP, provided the FDA.

Bilott’s decades-long work on behalf of plaintiffs exposed to PFAS included multidistrict litigation that in 2017 led the DuPont and Chemours Cos. to agree to pay a combined \$670.7 million to settle personal injury lawsuits stemming from PFOA found in water supplies.

PFOS and PFOA are the two types of PFAS that fall under the EPA’s 70 parts per trillion advisory for exposure. The U.S. doesn’t have recommended or enforceable limits for PFAS in food.

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‘Couldn’t Serve People Contaminants’

Venetucci Farm, a 192-acre community resource donated to and managed by the Pikes Peak Community Foundation in Colorado Springs, Colo., stopped growing produce or keeping egg-laying hens in 2016 after learning that PFAS were present in the food.

No one forced Venetucci Farm to stop selling vegetables to local residents, but “we had no idea what’s acceptable” levels of PFAS, said Sam Clark, the foundation’s special projects manager. “We couldn’t serve people contaminants.”

And Stone isn’t the only dairy farmer put out of business by PFAS. The cows of Art Schaap, owner of Highland Dairy in Clovis, N.M., drank water contaminated with the chemicals from the nearby Cannon Air Force Base.

Stone and Schaap may be the extent of the problem, said Clay Detlefsen, senior vice president of regulatory and environmental affairs and staff counsel for the National Milk Producers Federation. Their two stories illustrate how effectively the dairy supply is able to immediately stop any potential threat, Detlefsen said.

But there are more than 37,000 dairy farms in the U.S., according to the Agriculture Department. Dairies and other farms may learn a lot from Michigan’s extensive efforts to identify by year-end PFAS hot spots where high concentrations of the chemicals are found in land or water, Detlefsen said.

Even if agricultural sites are identified as contaminated with PFAS, however, there are many questions yet to be answered before knowing whether those levels are a concern, he said.

11 Million Olympic Pools

The EPA estimates about 600 PFAS are used in commerce, but 4,730 exist, according to the international Organization for Economic Cooperation and Development (OECD).

The production of so many goods using PFAS means the chemicals get released up factory smokestacks and into nearby waterways, said Norm Labbe, who recently retired as superintendent of the Kennebunk, Kennebunkport, and Wells Water District that notified Stone about the PFAS in his farm’s well. They’re put in landfills and composted, found in household dust, and flushed down drainpipes where they end up in sludge, or “biosolids,” like what Stone spread on his family’s farm, Labbe said.

The amount of PFAS detected in samples of U.S. biosolids from 2001 was enough to make approximately 11 million Olympic-sized pools of water exceed the EPA’s health advisory limit, said Rolf Halden, an Arizona State University professor. “That’s twice the mass of contamination needed to render all of the water presently in Lake Powell non-potable,” he said, referring to the nation’s second-largest water reservoir that straddles the Utah and Arizona border.

Halden coauthored a 2013 study investigating PFAS in biosolids from the 2001 EPA National Sewage Sludge Survey.

Once in the environment, “they just don’t break down,” said Matt Simcik, an associate environmental health professor at the University of Minnesota. Sunlight, enzymes, and bacteria in the environment can’t do more than turn them into other forms of PFAS.

The one common characteristic all PFAS share is having at least one atom of carbon bound to a fluorine atom, making it “the strongest and shortest bond in nature,” said Jennifer Field, an environmental toxicologist from Oregon State University. “This appears to be an impenetrable fortress.”

The human body gets rid of some PFAS within a few hours, but others deposit in organs or circulate in the blood for years, the EPA’s Lau said. “These chemicals love to bind to protein, any type of protein,” he said during a recent Texas A&M University webinar.

That’s where they emerge as a threat in the food supply.

“Various people have asked me, can we just filter the milk to get rid of the PFAS,” said Patrick MacRoy, deputy director of the nonprofit Environmental Health Strategy Center. “The answer is no.”

“You’d filter out the protein, and everything that makes milk milk in the process,” said MacRoy, whose Maine-based organization brought attention to Stone’s problems. “You would end up with just water.”

He also called the use of PFAS in compostable packaging “a striking, double-whammy of a problem.” The chemicals may directly contaminate food and then, when the packaging is composted, infuse crops with PFAS, he said.

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‘Do Not Eat’ Advisories

Michigan has the most known PFAS-contaminated sites in the nation, likely because it has the most intensive sampling program. It began to issue “do not eat” advisories for fish in 2010, and for deer in 2018, both after finding high levels of PFOS, said Kay Fritz, a toxicologist with the state’s Department of Agriculture and Rural Development.

State food safety officials began asking three questions about these chemicals, Fritz said:

1. <!--[if !supportLists]--><!--[endif]-->Do plants take up PFAS from contaminated soil or water?
2. <!--[if !supportLists]--><!--[endif]-->Do food animals absorb PFAS from contaminated feed or water?
3. <!--[if !supportLists]--><!--[endif]-->Could PFAS be found in milk or eggs?

“The scientific literature says yes” to all three, Fritz said during a June PFAS conference. “There are no federal standards for safe levels in food. Best practice is to reduce exposure wherever possible.”

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Federal Policies Sought

Attorneys general from 20 states, the District of Columbia, and Guam detailed actions they'd like the EPA to take in a July 30 letter sent to congressional leaders. States also want the FDA and the USDA involved.

"We join the broader food and consumer goods industry in encouraging federal regulators to establish clear and consistent guidelines around PFAS in consumer products," said John Bennett, president of Oakhurst, a New England dairy brand that had bought Stone's milk for more than two decades. "We are frustrated with the inconsistencies in approach related to PFAS."

Jackie Farwell, a spokeswoman for Maine's Department of Health and Human Services, also said inconsistent rules confuse the public, and called for the FDA to develop action levels for PFAS in foods such as milk, beef, and fish.

"Maine is, to our knowledge, the only state that has formally developed an action level for milk," Farwell said. The action levels apply to PFOS, the specific perfluorinated chemical found in high concentrations in the milk from Stone's farm.

In February, EPA Administrator Andrew Wheeler issued a memo directing agency researchers to investigate questions such as the extent to which PFAS are present in agricultural water, land, plants, and animals.

The federal government needs to better understand how widespread the chemicals are in the food supply, and assess potential harm to people and wildlife, said Christopher P. Higgins, a Colorado School of Mines professor whose research team found the PFAS contamination on the Venetucci farm.

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States, Companies Stepping Up

In the absence of federal regulation, states like Maine and Washington have passed legislation banning PFAS in food packaging, provided safer alternatives can be found.

And Ahold Delhaize USA, the parent company of grocery chains Food Lion, Giant Food and Stop & Stop, said Sept. 19 that it would ban PFAS packaging voluntarily for its brands, and verify the chemicals' elimination through testing.

The Department of Defense could help by providing farmers clean water when its military sites contaminated local supplies, said MacRoy, from the Environmental Health Strategy Center. Requiring the Pentagon to do that is one of dozens of PFAS policies Congress is debating.

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No Don Quixote

The options for farmers are limited.

Maine's Department of Environmental Protection discussed removing and replacing the PFAS-contaminated soil at the Stones' farm but the cost "could easily exceed \$25 million," spokesman David Madore said. Clean soil can't simply be put on top of the contaminated dirt: Rain would mobilize the chemicals, which would run downhill onto other land, he said.

"Mr. Stone did nothing wrong," Labbe, the former local water superintendent, said. "He was just another struggling farmer who was looking to support his family, and he had an opportunity to use low cost fertilizer, which was offered to him and approved by the agencies."

Stone hasn't earned income from his farm since 2016. Meanwhile, the Stones have spent \$21,000 installing a carbon filter for their home and dairy. That filter costs \$5,000 a year to maintain.

He purchased new cows and feed from out-of-state land where sludge had never been applied, and spent an "enormous amount of money" testing milk and water to see if the farm could get its dairy license back. Things looked hopeful in late 2018 and early this year, as the PFAS numbers went down. But new cows, new feed, and filtered water couldn't keep the cows clean. On March 29, Oakhurst, the dairy brand, finally fully terminated its relationship with Stone.

It's uncomfortable being the first farm known to have been contaminated with PFAS from sludge, rather than from a clearly identified industrial, military, or other facility, said Stone.

"Nowhere along the way here did we want to play Don Quixote," he said. "I'd just like to be left. Milk my cows and be left the hell alone and let me go about my life."

"But I guess that's not going to happen now."

Chemical Watch

US EPA watchdog to investigate agency conduct in Chemours case

<https://chemicalwatch.com/82511/us-epa-watchdog-to-investigate-agency-conduct-in-chemours-case#overlay-strip>

By Lisa Martine Jenkins

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The EPA's Office of Inspector General (OIG) will investigate whether the agency took sufficient action to verify Chemours' compliance with a consent order, restricting the chemicals giant from releasing the perfluorinated substance GenX into the environment.

In February, the EPA issued a Notice of Violation (NOV) to Chemours for a variety of alleged reporting and notification failures. Among others, the NOV cites the company's 2017 failure to control GenX effluent and emissions into North Carolina's Cape Fear River, as required by a 2009 TSCA Section 5(e) consent order.

This was the first NOV the agency has issued under TSCA, which indicated to some that it may be expanding its enforcement of TSCA violations more broadly.

According to a notice, published on 23 September, the OIG – the accountability arm of the agency – will now examine whether the agency did its part to check the company's compliance with that consent order. (While DuPont initially signed the order, corporate restructuring in 2015 left the new company Chemours with the chemical giant's PFAS business.)

The investigation will be based within the Office of Enforcement and Compliance Assurance and the Office of Chemical Safety and Pollution Prevention, as well as the Region Four, which covers North Carolina.

Using quality standards issued by the Council of the Inspectors General on Integrity and Efficiency, the OIG seeks to "improve controls over TSCA pre-manufacture notice consent orders", wrote Jeffrey Harris, the toxics director for the agency's auditing office.

The OIG operates independently of the EPA and is authorised to have "timely access to personnel and all materials necessary to complete its objectives."

Impending audit of the Safer Choice programme

Meanwhile, the OIG will also conduct an audit of the agency's Safer Choice labelling programme, in order to "identify and assess controls the EPA has in place to verify that [it] meets its goals and achieves quality standards through its product qualification, renewal and required audit process."

The agency watchdog announced on 23 September that it plans to begin fieldwork at both EPA headquarters and various third-party auditor locations to evaluate Safer Choice – a voluntary labelling programme highlighting products that use chemicals that are safer for human health and the environment. The investigation will use "applicable generally accepted government auditing standards".

"The anticipated benefits of this audit are reducing the use of chemicals of concern and empowering consumers to protect their health," wrote Mr Harris.

The Safer Choice programme appeared to be under threat by blueprint budget proposals that President Trump announced in 2017, but those rumours were unfounded. At the time, over 180 private sector organisations wrote to the EPA to express their support for the programme, calling it an "invaluable resource to industry".

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States

E&E

State regulators, agency spar over Wheeler's Calif. threats

<https://www.eenews.net/greenwire/2019/09/27/stories/1061175163>

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By Ariel Wittenberg

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State environmental regulators are pushing back against EPA Administrator Andrew Wheeler's threatened sanctions against California on water quality issues.

The Environmental Council of the States called in a letter to Wheeler yesterday for a meeting with the EPA chief.

"We are concerned about the lack of advance consultation with states and the impact of these and several other actions on the ability of states to protect human health and the environment, and call on U.S. EPA to return to the appropriate relationship with the states as coregulators under our nation's environmental protection system," the group wrote.

Approved by the ECOS annual meeting in Seattle yesterday, the letter was sent to Wheeler the same day the EPA chief told California to clean up San Francisco sewers and curb drinking water violations (Greenwire, Sept. 26).

Earlier this week, Wheeler told the California Air Resources Board that the Trump administration would revoke federal highway funds over Clean Air Act compliance issues (Greenwire, Sept. 24).

The administration last week moved to revoke California's Clean Air Act waiver over its efforts to curb automotive greenhouse gas emissions. The state has long had power to set tougher vehicle emission standards than those of the federal government.

ECOS said the letters "run counter to the spirit of cooperative federalism" — a buzzword of the Trump administration, which has said many of its other regulatory rollbacks are meant to empower states on environmental enforcement.

ECOS Executive Director Don Welsh said that his group's letter was approved by the majority of members at the annual meeting yesterday, and that those members came from both sides of the political aisle.

"Folks in the room thought the issue at hand was the process and not the merits of any particular issue, but the process of notification of states and wanting no surprises," he said. "It was a broad part of the membership at the meeting, and folks from every party were involved in the discussion."

EPA is pushing back against the group, saying in a statement: "The Trump Administration's Environmental Protection Agency has worked with individual State Departments of Environmental Quality in a manner unlike the previous Administration, and it will continue to work with states on issues the previous Administration ignored, such as approval of state air and water quality plans and cleaning some of the worst contaminated sites."

The EPA statement also includes quotes from five environmental regulators in Republican-led states that are "contrary to the assertions in the ECOS letter."

Those regulators: Noah Valenstein, secretary of the Florida Department of Environmental Protection; Gary Rikard, executive director of the Mississippi Department of Environmental Quality; Austin Caperton, secretary of the West Virginia Department of Environmental Protection; Todd Parfitt, director of the Wyoming Department of Environmental Quality; and Becky Keogh, secretary of the Arkansas Department of Energy and Environment, who was president of ECOS last year.

"Our relationship with EPA is much improved from previous years," Keogh's statement says. "Our relationship has been collaborative with respect to both process and substance."

EPA also listed what the Trump administration has done on the environment, comparing its efforts to the agency's efforts under President Obama.

On the Trump EPA's list: approving more than 50 air quality federal implementation plans on states, which the agency says is "10 times the number of FIPs imposed by the three previous administrations combined"; approving 231 state water quality standards since January 2017; and deleting all or part of 22 sites from the Superfund list last year, "the largest number of deletions in one year since 2005."

"On these and many other issues important to states, EPA will continue to work directly with State Departments of Environmental Quality on issues important to assist them in their missions to protect human health and the environment," the agency says.

"When a state fails to safeguard the health of their citizens, the EPA has and will step in to fill that void, whether it is ensuring that states submit [state implementation plans] which show attainment, fulfill their obligations under delegated water programs, or provide safe sources of drinking water when contaminants are present."

The statement also says Wheeler won't meet with ECOS because EPA "senior leadership" attended the group's annual meeting this week.

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Supreme Court

E&E

Fall environmental docket: 'Calm before the storm'

<https://www.eenews.net/greenwire/2019/09/27/stories/1061175007>

By Pamela King

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As disputes over key Trump administration environmental actions crescendo in the lower courts, the nation's highest bench is filling out its calendar with a small set of cases that could have major impacts on water permitting, Superfund cleanups and tribal lands.

The two marquee environmental items on the Supreme Court justices' to-do list this term involve examinations of the role of groundwater in Clean Water Act permitting and the limits of cleanup accountability under the Comprehensive Environmental Response, Compensation and Liability Act, also known as Superfund.

Over the course of its term, which begins Oct. 7 and runs through June, the court will also decide whether to tackle a long list of issues, such as state water quality certifications and land takings for natural gas pipelines.

"This won't be a huge blockbuster for environmental law, but it may be the calm before the storm," said Bob Percival, head of the University of Maryland's environmental law program.

Last year, the court opened its term with high-profile Endangered Species Act, property rights and uranium mining disputes. The court made headway on important administrative law questions with big implications for the agencies that regulate in the environment and energy space. Several such questions are expected to reemerge during the court's next term.

"Administrative law frequently dictates environmental law and the scope of the federal government's powers over environmental law," said Scott Keller, chairman of the Supreme Court and constitutional law practice at Baker Botts LLP.

While the Supreme Court kicks into gear, federal district and appeals courts will soon wade into nascent disputes over the Trump administration's efforts to repeal and replace the Obama-era Clean Power Plan and Waters of the U.S., or WOTUS, rule. A third Trump EPA action to overhaul fuel emissions and fuel economy standards is also in its early stages.

Legal experts expect those issues to make their way to the high court in future terms, although the justices could jump in earlier on procedural grounds if a district or circuit court issues a nationwide block against a Trump-era regulation. The Supreme Court recently dissolved a 9th U.S. Circuit Court of Appeals injunction against the government's new asylum restrictions.

"It's early," said Tony Francois, senior attorney for the Pacific Legal Foundation. "And there are a lot of recently completed or impending regulatory actions from the Trump administration, particularly from EPA, that we should reasonably expect to make it to the Supreme Court."

Here's what to watch in the court's new term.

Clean Water Act: An open question



The Supreme Court could drop a high-profile Clean Water Act case from its calendar after officials in Maui County voted to settle the dispute. The justices could still eventually address the key question in the case. Warren Gretz/NREL

Local officials last week voted to settle a municipal wastewater disposal dispute that teed up a highly anticipated Clean Water Act case at the Supreme Court.

The question at the heart of *County of Maui v. Hawai'i Wildlife Fund* is whether contaminants that move through groundwater to a federally regulated water body are subject to the Clean Water Act's permitting requirements. Arguments had been scheduled for Nov. 6.

Environmental groups expect the court to drop the case, but some county officials have raised questions about the Maui County Council's authority to settle the case.

Even if Maui County drops its appeal, the underlying Clean Water Act question could still make its way to the Supreme Court, legal experts say.

"The conservative majority on the court probably wants to send a message that it's going to interpret the Clean Water Act as narrowly as possible," Percival said.

The justices have pocketed other petitions that highlight the same Clean Water Act question. One of those cases, a fight over coal ash contamination from Tennessee Valley Authority's Gallatin Fossil Plant, also settled before making it to the high court.

A third case, *Kinder Morgan Energy Partners v. Upstate Forever*, still waits in the wings. The challenge stems from a gasoline pipeline leak in South Carolina.

Cases on the calendar



The justices will hear a dispute over the Anaconda Smelter Stack in Montana. The outcome of the case is expected to have major impacts for Superfund cleanups nationwide. Butte Citizens' Technical Environmental Committee

Electrical Industry and Irrigation Workers Union v. Financial Oversight and Management Board for Puerto Rico

The Supreme Court will kick off its second week of action with a case that probes the legality of appointments to the Puerto Rico Financial Oversight and Management Board.

A union for the Puerto Rico Electric Power Authority says a fiscal plan introduced by the board affected workers' benefits, including sick leave and health insurance. The labor group argued that the 2016 Puerto Rico Oversight, Management and Economic Stability Act improperly allowed the board's members to exercise significant authority without Senate scrutiny of their appointments to the panel.

The 1st U.S. Circuit Court of Appeals agreed with the union but stopped short of invalidating the board's actions out of concern for Puerto Rico's tenuous debt restructuring process and rebuilding in the aftermath of Hurricane Maria.

"The limits that the court puts on how agencies can be constructed will affect practical considerations an agency could have when it goes to take action," said Keller of Baker Botts.

Oral arguments are scheduled for Oct. 15.

Citgo Asphalt Refining Co. v. Frescati Shipping Co. Ltd.

A 2004 oil tanker spill in the Delaware River triggered a tussle over cleanup liability that will make its way to the nation's highest bench this fall.

The justices will consider whether Citgo should be financially responsible for a spill that occurred after Frescati Shipping's Athos I vessel hit an abandoned anchor and released 264,000 gallons of oil into a federally controlled section of the river. Citgo had chartered the ship to bring crude to its Paulsboro, N.J., asphalt refining facility.

Frescati and the government sued Citgo on the grounds that the voyage charter required the company to safely bring the ship to port. The 3rd U.S. Circuit Court of Appeals agreed.

Citgo said it was merely required to conduct due diligence and had no way to know the anchor was in the river.

Arguments take place Nov. 5.

Department of Homeland Security v. Regents of University of California

A battle over the Department of Homeland Security's decision to walk back the Obama-era Deferred Action for Childhood Arrivals program will have ripple effects for environmental law.

Parties in the case want the justices to weigh in on the legality of the department's move to wind down the DACA policy. In other words: Does the government's decision to scrap a non-rulemaking program trigger a rulemaking process under the Administrative Procedure Act?

Litigants often invoke the statute in challenges of efforts by EPA, the Interior Department and other agencies to craft or rescind environmental regulations.

Arguments are scheduled for Nov. 12.

Atlantic Richfield Co. v. Christian

Superfund experts expect the outcome of a dispute over cleanup of a Montana copper production site to have major ramifications for environmental cleanups nationwide.

Landowners within the 300-square-mile cleanup area around Atlantic Richfield's Anaconda Smelter called on state courts to require the company to carry out work beyond what is required under EPA's plan. Atlantic Richfield, a subsidiary of BP PLC, escalated the dispute to the Supreme Court.

CERCLA experts say the case could encourage attempts by landowners to second-guess federal solutions to environmental contamination and could leave companies reluctant to agree to EPA cleanup plans in the future.

The court will hear oral arguments Dec. 3.

Sharp v. Murphy

Did the 1999 murder of Muscogee (Creek) Nation member George Jacobs in eastern Oklahoma occur on state or tribal land?

The Supreme Court's answer will determine whether 3 million acres in the Sooner State is still under tribal control. The outcome of the case, which stems from Oklahoma's decision to try to sentence to death tribal member Patrick Murphy for the crime, could have big implications for oil and gas operations across the region.

The justices heard arguments last fall but punted the dispute to the 2019 term. The case, formerly titled *Carpenter v. Murphy*, is scheduled for reargument at a date yet to be determined.

'The dance card is not full'



Conservation groups have asked the Supreme Court to examine states' role in water permitting for projects like PacifiCorp's Iron Gate Dam in California. Jeremy P. Jacobs/E&E News

The court's environmental docket could change dramatically if the justices decide to take up a few key disputes over issues such as state water permits, pipeline building and wildfire liability.

Acceptance of a would-be Supreme Court showdown requires the support of four justices. The court has time to review only about 1% of the cases it receives each term.

"The dance card is not full — I expect them to ultimately take over 70 cases this term," said John Cruden, an attorney with Beveridge & Diamond PC and the former head of the Justice Department's environment division.

Conservation groups have asked the justices to examine a practice of extending state permitting deadlines for dams, pipelines and other infrastructure. Section 401 of the Clean Water Act grants states the power to certify that federally permitted projects align with water quality standards within their borders. But if a state does not act within a particular time frame, generally about a year, federal regulators can determine the state has waived its authority.

In *California Trout v. Hoopa Valley Tribe*, petitioners argue that some projects, like a series of PacifiCorp dams along the Klamath River, are too complex to be completed within that time frame. Their call to the high court also coincides with efforts by the Trump administration to restrict state water quality permitting powers.

Several pipeline cases are also on deck for Supreme Court review.

In a pair of companion petitions, the federal government and developers of the Atlantic Coast natural gas pipeline have asked the justices to weigh in on whether the Forest Service has the power to approve a right of way across the Appalachian Trail. If the court rejects those petitions — or if it sides with arguments by environmental opponents — builders of the 600-mile pipeline could be forced to reconfigure the project.

The justices will also have a fresh chance to consider whether pipeline developers can seize private land for their projects before paying. The court has tossed other pleas for intervention on this question, but petitioners in *Givens v. Mountain Valley Pipeline* say they hope the justices might be more willing to take up a case involving a project that is not yet complete.

One of California's top power providers has asked the bench to consider whether states can properly hold utilities responsible for property damage from wildfires without allowing companies to recoup costs from ratepayers.

The justices could also choose to wade into a defamation dispute between conservative groups and climate scientist Michael Mann. Petitioners in *Competitive Enterprise Institute v. Mann* want to know whether a court can fault them for writing and reprinting a blog post accusing Mann of fraud and comparing the scientist to convicted child abuser Jerry Sandusky.

Among the other challenges the court could opt to review are a dispute over shipments of weapons-grade plutonium to a planned Energy Department facility in South Carolina; a case involving the government's duty to prevent toxic exposures like lead contamination in Flint, Mich.; and a property rights tangle between a recycling facility and a California city that hinges on the definition of "waste."

The court will examine its first crop of cases for the term next week.